

## REMARKS

In accordance with the foregoing, claims 1-4, 12, 15, 17-18, and 20-23 are amended. Claims 1-28 are pending and under consideration. Reconsideration is requested.

## BACKGROUND

A Response ("prior Response") to the Final Office Action ("current Office Action") was filed September 20, 2007.

An Advisory Action was mailed October 16, 2007.

Claims 1-28 are pending and under consideration. Reconsideration is respectfully requested. Applicants request entry of this Rule 116 Response and Request for Reconsideration because arguments herein should put claims in a condition for allowance or in a better condition for appeal.

### I. Current Action Is Incomplete

As submitted in the prior Response, Applicants respectfully submit that the current Office Action incomplete since the Examiner has not responded to all of Applicants' arguments traversing the rejections from the previous Office Action mailed November 16, 2006 that were presented in the previous Amendment filed February 16, 2007 ("previous Amendment").

In the previous Amendment, Applicants traversed the rejections of claims 1-13, 15, 18, and 20-24 under 35 U.S.C. §103(a) as being unpatentable over Namekawa (U.S.P. 6,237,027) in view of Trompower et al. (U.S.P. 6,128,512) arguing, in part, that recited features are not taught by an *arguendo* combination of Namekawa with Trompower since Trompower teaches a limitation of "transmission parameters" that are dynamically modified to parameters such as chipping rate and that such modification is limited to a teaching of a modification based on distance between the transmitter and receiver and noise conditions.

Further, Applicants argued that Trompower teaches a modification is performed while performing an adjustment and the wireless system only performs such adjustment between a particular mobile terminal and a base station. That is, one of understanding in the art, would not have modified Namekawa using the limited methodology of Trompower to teach a dynamic selecting of, for example, a "message destination."

In the prior Response, Applicants submitted that the Examiner repeats his assertions in support of the rejection and in an attempt to establish *prima facie* obviousness but does not completely address the Applicants' argument.

In the Advisory Action, the Examiner asserts:

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. . . . Dynamically determining a message destination is found in Namekawa. The combination is in regards to dynamically determining a transmission means. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . . In this case, the knowledge is generally available to one of ordinary skill in the art as it is applying a known technique to yield predictable results. The applicant argues that the reference, Namekawa, does not disclose detecting and reporting to servers a change of status of a connection. The examiner respectfully disagrees, as seen in, column 3, lines 56-65 and column 6, lines 34-65, there is arrival detection and the recording the status of the detection on an electronic mail which is sent to servers in an electronic mail system.

(See, Advisory Action, continuation of 11).

That is, the Examiner has still not addressed the Applicants arguments."

### **Summary**

Since the current Office Action is incomplete, Applicants respectfully request that the case is not allowed, that any action be a nonfinal Action issued including a complete response and with the due date accordingly reset.

### **Claim Amendments**

Claim 1 is amended herein to replace the phrases "determining means" with the phrase --selecting means--, and the phrase "dynamically determining a message destination" with the phrase --dynamically selecting a message destination--. Claims 2-4, 12, 15, 17-18, and 20-23 are similarly amended.

Support for the amendment is found, for example, in paragraphs [0016], [0130], and [0134]-[0182] of the specification. No new matter is being presented, and approval and entry are respectfully requested.

## **II. Traverse of §102 and 103 Rejections**

### **Item 7: Rejection of claim 19 under 35 U.S.C. §102(e) as being anticipated by Namekawa**

In item 7 of the Office Action, the Examiner rejects claim 19 under 35 U.S.C. §102(e) as being anticipated by Namekawa. In item 9 of the Office Action in the section entitled "Response To Arguments," the Examiner cites Namekawa col. 6, lines 34-48, as teaching "arrival detection and the recording the status of the detection." (Action at page 29, lines 5-6). The rejection is

traversed.

As set forth in MPEP §706.02 entitled Rejection on Prior Art, anticipation requires that the reference must teach every aspect of a claimed invention.

Applicants submit that Namekawa does not support an anticipatory-type rejection by not describing features recited in claim 19.

Applicants submit that Namekawa does not teach a method "utilized in an information terminal provided with communication means for transmitting and receiving text messages among mobile terminals or other information terminals via communication lines and servers ... (including) detecting and reporting to the servers an operational status of the each transmission means including at least a change of status of a connection with the communications lines (emphasis added), as recited by claim 19. "

In the Advisory Action, the Examiner asserts:

The applicant argues that the reference, Namekawa, does not disclose detecting and reporting to servers a change of status of a connection. The examiner respectfully disagrees, as seen in, column 3, lines 56-65 and column 6, lines 34-65, there is arrival detection and the recording the status of the detection on an electronic mail which is sent to servers in an electronic mail system.

(See, Advisory Action, continuation of 11).

However In the citations that the Examiner highlights, Applicants point out that Namekawa merely discloses:

In FIG. 1, numeral 1 generally shows an electronic mail system according to a computer network, and a local area network (LAN) 2 constructed in an office is connected to a wide area network (WAN) 3. In the electronic mail system 1, each of the computer devices connected to the LAN 2 and the WAN 3 can receive/transmit message information being literal data (hereinafter, referred to as electronic mail) with each other. Thus, in the electronic mail system 1, the electronic mail is used for exchanging messages between users of computer devices.

and,

Further, in the item to set the time interval of arrival detection, it is set at what time intervals the arrival of electronic mail is detected. Also in the item to set the number of redialings, it is set up to how many times the call is issued to the portable computer 9 or the portable telephone 10. And if the number of calls exceeds the number of calls set here, the computer 5 records the failure of connecting on the electronic mail of which the arrival was informed and the time tried to connect. The user can judge based on the record whether he is not within the receivable area of the base station 8 or any trouble occurs in the computer 5. On the other hand, when the connection has succeeded, the computer 5 records that the connection has succeeded on the electronic mail of which the arrival was informed on the hard disk drive 14 as the communication record.

(col. 3, lines 56-65 and col. 6, lines 34 -65).

That is, as pointed out in the previous Response, Namekawa teaches that "computer 5 records the failure of connecting" . . . (so that) . . . The user can judge . . . computer 5 records that the connection has succeeded. (See, for example, col. 6, lines 34-48).

That is, the Examiner is in error in his interpretation of since Namekawa does not teach an information terminal reporting to servers a change in operational status, but merely a computer recording a failure of connecting or a success of connecting. Such a failure or success is recorded for the "user."

Further, the Advisory Action does not address the argument submitted in the prior Response.

### **Summary**

Since features recited by claim 19 are not taught by the Namekawa the rejection should be withdrawn and claim 19 allowed.

**Item 2: Rejection of claims 1-13, 15, 18, and 20-24 under 35 U.S.C. §103(a) as being unpatentable over Namekawa in view of Trompower**

**Item 5: Rejection of claims 27-28 under 35 U.S.C. §103(a) as being unpatentable over Namekawa and Ishikura et al. (U.S.P. 6,052, 565) in view of Lazaridis et al. (U.S.P. 6,219,694)**

In item 2 of the Office Action, the Examiner rejects claims 1-13, 15, 18, and 20-24 under 35 U.S.C. §103(a) as being unpatentable over Namekawa in view of Trompower. (Action at pages 2-19). In item 5 of the Office Action, the Examiner rejects dependent claims 27-28 under 35 U.S.C. §103(a) as being unpatentable over Namekawa and Ishikura in view of Lazaridis et al., (U.S.P. 6,219,694). (Action at pages 25-26). The rejection is traversed.

As discussed in the prior Response, Applicants submit that features recited by each of the independent claims are not taught by the cited art even in an *arguendo* combination.

For example, the cited art, even in combination does not teach a message destination, transmission means and transmission mode are dynamically selected according to a change of status.

Independent claim 1, for example, recites a text messaging system including:

a) " . . . means having different transmission modes provided in each of the information terminals for transmitting to the servers text messages addressed to other of the information terminals (emphasis added);" and

b) "reception means provided in the information terminals for receiving from the servers a text message from other of the information terminals (emphasis added);" and

c) status detection means provided in the information terminals for detecting and reporting to the servers an operational status of the each transmission means including at least a change of status of the connection with the communication lines (emphasis added);" and

d) reception means provided in the servers for receiving text messages from any one of the information terminals; (emphasis added);" and

e) status administration means provided in the servers for storing, per user of any one of the information terminals, the operational status, including the change of status, of the each transmission means of each information terminal reported from said status detection means; (emphasis added);" and

f) selecting means provided in the servers for referring to the operational status, including the change of status, stored by the status administration means of an information terminal that is a destination of the text message received from the information terminal, and for dynamically selecting a message destination and a transmission means and transmission mode for the received text messages according to the stored operational status and change of status; (emphasis added);" and

g) transmission means provided in the servers for transmitting text messages received from the information terminals to the destination information terminal according to the dynamically selected transmission mode using the dynamically selected transmission means (emphasis added)." Independent claims 2, 15, 21, and 23 have similar recitations.

Independent claim 12 recites a system including "... means provided in the first server for gathering and storing per user of the information terminals, an operational status, including the change of status, of the each transmission means from each information terminal; . . . means provided in the second server for receiving text messages from the mobile terminal or the information terminal; . . . means provided in the second server for obtaining from the first server operational status, including the change of status, of the information terminal that is a destination of the text message received from the information terminal, and for dynamically selecting a transmission mode for received text messages according to the obtained operational status and change of status; and . . . means provided in the second server for transmitting text messages received from the mobile terminal or the information terminal to another mobile terminal or a destination information terminal according to the dynamically selected transmission mode using the dynamically selected transmission means. (emphasis added).

Independent claim 18 recites a method including "detecting and reporting to the server an operational status of each transmission mean . . . selecting a transmission mode for the received text messages according to the stored operational status and change of status of the

information terminal; and transmitting and receiving text messages by way of the server between the mobile terminal and the destination information terminal, or between the mobile terminal and another mobile terminal, wherein the system includes a plurality thereof, or between the information terminal and the destination information terminal, wherein the system includes a plurality thereof, according to the dynamically selected transmission mode (emphasis added)." Independent claims 20 has a similar recitation.

Applicants submit that features recited by each of the independent claims are not taught by the cited art even in an *arguendo* combination.

That is, the cited art does not teach an selecting means provided in the servers for referring to the operational status, including the change of status, stored by the status administration means of an information terminal that is a destination of the text message received from the information terminal, and for actively "dynamically selecting" a message destination and a transmission means and transmission mode for the received text messages according to the stored operational status and change of status.

The cited art does not teach transmission means provided in the servers for transmitting text messages received from the information terminals to the destination information terminal according to the actively "dynamically selected transmission mode" using the actively "dynamically selected transmission means.

Further, discussed above in traversing the rejection of claim 19, Namekawa does not teach reporting to servers the change in operational status, as recited by each of the independent claims, as the Examiner asserts. Accordingly, even a combination of the cited art does not teach reporting to servers a change in operational status.

The Action concedes that:

Namekawa fails to teach the limitation further including dynamically determining a transmission means.

(Action at page 4, lines 8-9).

The Examiner asserts:

Trompower teaches the use of dynamically modifying data transmission parameters . . . It would have been obvious . . . to modify Namekawa in view of Trompower to dynamically determine a transmission means. One would be motivated to do so because it optimizes overall system performance.

(Action at page 4, lines 12-17).

In item 9 of the Office Action in the section entitled "Response To Arguments," the Examiner further asserts:

[O]ne cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references . . . Dynamically determining a message destination is found in Namekawa. The combination is in regards to dynamically determining a transmission means.

(Action at page 28, lines 9-14).

In the Advisory Action, the Examiner asserts:

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Dynamically determining a message destination is found in Namekawa. The combination is in regards to dynamically determining a transmission means. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art as it is applying a known technique to yield predictable results.

Applicants point out however, that in *KSR International*, the U.S. Supreme Court held that in determining obviousness, one also "must ask whether the improvement is more than the predictable use of prior art elements according to their established functions (emphasis added)" slip op. 13, 82 USPQ2d at 1396.

Furthermore, it is necessary "to determine whether there was an apparent reason to combine the known elements in the fashion claimed" slip op. 14, 82 USPQ2d at 1396.

The Supreme Court further affirmed the *KSR International* holdings in *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), stating: "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (Emphasis added).

Applicants submit that the Examiner's assertions in support of a proposed combinations "are merely conclusory and without articulated reasoning." The Examiner is, in essence, asserting the references could be modified in any manner whatsoever - which is clearly not the case and not supported by KSR.

Further, Applicants further submit to the Examiner that this traversal meets the Consideration of Applicant's Rebuttal Evidence Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* of October 3, 2007.

That is, Applicants submit it is in error to assert that the cited art would have been modified to teach an selecting means provided in the servers for actively "dynamically selecting" a message destination and a transmission means and transmission mode for the received text messages according to the stored operational status and change of status and transmitting text messages received from the information terminals to the destination information terminal according to the actively "dynamically selected transmission mode" using the actively "dynamically selected transmission means.

Applicants submit that one of ordinary skill in the art would not have combined the claimed elements by known methods, the elements in combination do not merely perform the function that each element performs separately, and the results of the claimed combination were unexpected.

### **Summary**

Since features recited claims 1-13, 15, 18, 20-24 and 27-28 are not taught by even an arguendo combination of the art relied on by the Examiner, and *prima facie* obviousness is not established, the rejection should be withdrawn and claims 1-13, 15, 18, 20-24, and 27-28 allowed.

### **Items 3-4: Rejections Of Claims 14, 16-17 and 25 under 35 U.S.C. §103(a) as being unpatentable over Namekawa in view of combinations of Trompower and Ishikura**

In items 3 and 4 of the Office Action, the Examiner rejects claims 14, 16-17 and 25 under 35 U.S.C. §103(a) as being unpatentable over Namekawa in view of combinations of Trompower and Ishikura. (Action at pages 20-24). The rejections are traversed.

Claim 14 recites in an information terminal provided with communication means for transmitting and receiving text messages among mobile terminals or other information terminals via communication lines and servers responsive to said communication means, a text messaging device comprising:

- a) " . . . means having different transmission modes for transmitting to the servers text messages addressed to the mobile terminals or to the other information terminals;"
- b) "reception means for receiving from the servers text messages from the mobile terminals or from the other information terminals;" and
- c) "status detection means for detecting and reporting to the servers an operational status of the each transmission means of the information terminals including at least a change of status of a connection with the communications lines,"
- e) "wherein the detecting the change of status further comprises: detecting a



disconnection of one of the each transmission means, and detecting whether a user is using one of the information terminals." Claim 16 has a similar recitation.

Claim 17 recites a computer-readable recording medium recording medium "receiving text messages from the mobile terminal or the information terminal; obtaining and storing, per user of the information terminal, an operational status, including a change of status, of each transmission means of each the information terminal ;selecting each text message transmission mode according to the operational status, including the change of status, of the information terminal; and transmitting text messages from the information terminals to a destination information terminal according to the selected text transmission mode, wherein the change of status further comprises: a disconnection of one of the each transmission means and a use of an information terminal by a user (emphasis added)."

Dependent claim 25 recites a system "wherein the change of status that is detected and reported is a change from a connected status with the Internet to a disconnected status or change in a use of an information terminal by a user."

Applicants submit that features recited by claims 14, 16-17, and 25 are not taught by even an *arguendo* combination of the cited art.

The Action concedes Namekawa in view of Trompower does not teach:

detecting and reporting a change of status of a connection, wherein the detecting the change of status further comprises: detecting a disconnection of one of the each transmission means, and detecting whether a user is using one of the information terminals.

(Action at page 20, line 20 - page 21, line 2).

In the Advisory Action, the Examiner asserts:

The applicant argues that the reference, Namekawa, does not disclose detecting and reporting to servers a change of status of a connection. The examiner respectfully disagrees, as seen in, column 3, lines 56-65 and column 6, lines 34-65, there is arrival detection and the recording the status of the detection on an electronic mail which is sent to servers in an electronic mail system.

(See, Advisory Action, continuation of 11).

However, in the previous Response, Applicants submitted that Examiner assertions are in error since an *arguendo* combination does not teach "(1) detecting and reporting to the servers an operational status of the each transmission means of the information terminals including at least a change of status of a connection with the communications lines, (and) (2) wherein the detecting the change of status further comprises: detecting a disconnection of one of the each transmission means, and (3) detecting whether a user is using one of the information

terminals (emphasis added)," as recited by claim 14, for example. That is, not merely "detecting and reporting to servers a change of status of a connection" as the Examiner incorrectly asserts.

Applicants further submit to the Examiner that this traversal meets the Consideration of Applicant's Rebuttal Evidence Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc. of October 3, 2007.

Applicants submit that one of ordinary skill in the art would not have combined the claimed elements by known methods, the elements in combination do not merely perform the function that each element performs separately, and the results of the claimed combination were unexpected.

By contrast, Ishikura merely teaches:

Note that FIG. 21 shows a list of the relationship among the battery voltage values  $V_{cc}$ , their functions, and status change report data (L7, L8, L9). Note that other bits L0 to L6 of the status change report data are respectively assigned to inform the personal computer PC of L6: incoming call, L5: call disconnection, L4: system access errors, L3: successful connection, L2: call interrupt, L1: hand-off start, and L0: hand-off end.

(See, for example, col. 15, lines 60-67).

That is, Ishikura merely teaches a change of status is informed to a personal computer. The Examiner has shown articulated reasoning for an *arguendo* combination to teach a reporting to servers.

Applicants submit that the Examiner is in error in his suggestion to modify Namekawa with Trompower, since Trompower teaches a specific limitation of "transmission parameters" that are dynamically modified and a restriction on when such modification is made.

Further, Applicants also submit that one of ordinary understanding in the art would not have modified Namekawa to teach selecting each text message transmission mode according to the operational status, including the change of status, of the information terminal; and transmitting text messages from the information terminals to a destination information terminal according to the selected text transmission mode, as recited by claim 17, using the limited methodology of Trompower.

Applicants respectfully submit that the Examiner's assertions in support of a proposed combinations "are merely conclusory and without articulated reasoning."

Further, an *arguendo* combination of Namekawa and Ishikura and Trompower does not teach the detecting of a connected status with the Internet, as recited by claim 25.

### Summary

Since features recited by claims 14, 16-17 and 25 are not taught by even an *arguendo* combination of the art relied on by the Examiner, and the Examiner is in error as to suggestions as to combinations of the art, the rejection should be withdrawn and claims 14, 16-17 and 25 allowed.

### CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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